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KENTUCKY STATE CONVENTION. OFFICIAL REPORTS.

MR. R. SUTTON, CHIEF REPORTER.

FRIDAY, NOVEMBER 9, 1849.
[Proceedings Continued.]

Mr. C. A. WICKLIFFE. This proposition seems to be one which I cannot well comprehend. It is to have two county court organizations in the same county, to have two sheriffs, and two clerks' offices for registering deeds and wills, whose jurisdiction shall be co-extensive with the bounds of the county. I admit there is weight in the ideas suggested by both the gentlemen from Jefferson upon the subject of the revenue and the county taxes. I do not know that the mode of organizing the county courts, as contemplated by the committee, will contain any constitutional inhibition which will prevent the legislature from meeting the difficulty in this case. The legislature will not be prohibited from giving to any county a tribunal for levying the revenue. They may make the magistracy a tribunal for this purpose, for the county levy is not imposed on the citizens of the county, nor can the levy of the county court as now organized, sitting in Louisville, have therefore, by any legislative enactment, exercised the power of taxation outside of the city. They now control this business by a kind of common consent. Now if the evil be as the gentleman has supposed, why may they not give to the county of Jefferson a board for taxing the citizens separate from the city of Louisville? There is no inhibition, and I think it will be a most judicious arrangement that the county court of Jefferson should be organized in the same county. I rose with a desire to preserve harmony in the provisions of the constitution, and I think they would be any thing but harmonious with double county sitting at the same time, or at different times, with two sheriffs, one running into the city of Louisville and the other in the county of Jefferson. These evils which I think should be eradicated in the constitution, and it would be much better to leave the magistracy to act on the subject. Let the magistracy be organized into a board to impose taxes, or let them adopt any other system which may be deemed appropriate.

Mr. PRESTON. I am not prepared to take up the time of the house on this matter. The reason that I resisted the proposition was for the purpose of placing the county of Jefferson under the dominion of the city of Louisville, or that the city should have the power of exercising any political tyranny over the county. The gentlemen from Jefferson who presented the resolution, moved for the first part of the order, these things which the legislature already have the right and power to do; but in the latter part, he urged a proposition, with that parliamentary dexterity for which he is remarkable, which would permit the county to be cut in two by a sort of proviso. It says, in effect, that the county and city shall be distinct, and that the city shall be distinct from the county. But there shall be distinct sheriffs, clerks, and municipal tribunals and officers. The resolution containing that provision was voted down yesterday by a majority of about fifty eight to twenty four.

So far as I yesterday used the terms whig and democrat, I said, I could conceive no other reason, no other practical objection in this measure but to produce a county contest for local officers. I, Mr. Chairman, have been indebted to my democratic friends as well as to my whig friends for my place on this floor, and I am happy to have received substantial testimonies of kindness from both parties in the only political canvass I ever made. For the reasons I have given, my apology to you; I said I saw no reason for dividing the city and county, but to have a county race for county officers, and I yet see none, as I have no knowledge of any existing grievances which demand such redress.

What would be the mode of levying the county taxes, if the city and county were to be divided? It would be the very same which has prevailed for the last eight or ten years. The only difference would be that, instead of the appointment of a magistracy by the governor, on the recommendation of the county court, the people under the new constitution will elect them; yet the gentleman seems to think such a magistracy, so chosen, would be a great improvement, by taxation, on the people of Jefferson before the legislature could convene.

That the general assembly have a right to provide for the appointment of a separate clerk of the court and sheriff in the city of Louisville, and to invest it with the separate rights of a county, is a matter which I do not claim. But that the county of Jefferson shall have separate elections, officers and courts, and yet come to the city to hold those courts, would be like demanding that new counties should be established, but yet should have the right to hold their courts at the county seat.

If the gentleman desires a general declaratory provision, I have no objection to it; but it is only acting in reference to that which the legislature will have a right to do, whether we act on it or not. I am willing to say that a board of county magistracy may lay the levy and disburse it; but I am opposed to a division of the county and city, with separate sheriffs and county officers, having a mixed jurisdiction. According to the resolution the legislature would be compelled to divide the city and county, forthat is imperative. It declares that the county and city shall be divided. It says, "the city or town shall be invested," &c. I believe it is more advisable for this convention to refer this matter to the action of the legislature which shall convene under the new constitution, than to attempt to regulate it themselves.

I am not certain that the city of Louisville would not be willing that this arrangement should be hereafter made; but there has been, as yet, no petition from any quarter on this subject, nor public movement on the part of the citizens before the election, and it would be unprecedented to consummate such an act under such circumstances. It seems inappropriate for this convention to enter upon such duties, and for these reasons I am opposed to it. I, therefore, to manifest the arrangement to which I would assent, offer this as a substitute.

Office or town, entitled to separate representation, may be invested with the privilege of a separate municipal government, and of having separate courts and separate officers, in the same manner provided for separate counties, and on such terms and conditions as the general assembly may by law provide.

Mr. MERIWETHER. From indisposition, I have been unable to enter at length into this discussion, but I beg the indulgence of the house, while I give some reason for the adoption of my amendment. The gentleman from Louisville says it is now a separation if that amendment is adopted. I use the same language with reference to counties, that the gentlemen of the committee used with reference to cities. What is the language of the report of the committee on the legislative department?

"Provided, That when it shall appear to the legislature, that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in both houses of the general assembly."

I use that language to meet the contingency, that a county may have the privilege of separate municipal government; and I ask why, when a city may claim a separate municipal government, you turn us over to the legislature? Is the proposition right? Then why not act on it here? Will not this proposition be met by the same resistance in the legislature, that it meets here? Why provide for every county, whether we wish a separate representation or not, and turn us over to be taxed with the city of Louisville?

The gentleman from Nelson says, this can all be regulated by law. Suppose it can. Does it follow that we should not act on it here? Is there any provision introduced into this constitution, that the legislature should not have provided for? Are we to leave all to the legislature? Surely not. Then why not let the constitution bear on this point?

Mr. C. A. WICKLIFFE. I did not say, if we passed the constitution as proposed, the legislature would have power to do what the gentleman desires to do. I said, the legislature had power to remove the only evil of which the county courts are complained of, and that is, the taxation and the levying of taxes. I will read the act that relates to the regulation of the business of the county court of Jefferson, and other purposes.

"That from and after the passage of this act, the justices of the peace of Jefferson county, residing without the limits of Louisville, shall constitute the court for laying the levy of the county of Jefferson, and appropriating and disbursing the same; and the justices of the peace of said county, residing in Louisville, shall not preside in laying the levy in the county of Jefferson, or in appropriating or disbursing the same."

Now, if you pass the provision in reference to county courts, as proposed, all the evils in reference to the county court of Jefferson, as resented and taxation should go hand in hand, and we did so in order to prove that the county of Jefferson has been taxed not according to its population and its own representation but the representation of the city of Louisville. Now an effort was made to impress the convention that this is a fact, but there is not a particle of truth in it, not that I mean to say that the gentleman made a wilful misrepresentation. Both the gentlemen well knew that a law was passed giving to the county of Jefferson, solely and entirely the power to have its own magistracy impose its own taxes, and collect and disburse its revenue. Neither the city of Louisville, nor any man in it, had anything to do with the management of the affairs of that county. And yet they come forward and say that, according to the new judicial system, about to be adopted, Louisville will have a great ascendancy and advantage over the county of Jefferson, on account of its larger population. We do not desire any such thing, and do not ask it. We wish Jefferson to be taxed as the county of Jefferson, and would not like to bear a portion of the taxation of Louisville—for that is more than double what its people have to pay. No they do not ask it nor do they want it.

The gentleman last up said (and I do not know where he obtained his information, which he has since contradicted) that the city of Jefferson has disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. I have been a member of the city council for many years, and I know that when the county of Jefferson has been called upon to pay up its proportion of money, on account of public improvements, it did not advance more than thirty thousand dollars. But the gentleman says, the fact has escaped my memory. If there be any thing to show that the county has done so, then I am very much mistaken. All the money went through the hands of the city council, and was paid out by them, to those who contracted for the erection of the buildings, and the city of Jefferson, and the city of Louisville, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. The city and county defray the expenses of maintaining the courts, and the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. The city and county defray the expenses of maintaining the courts, and the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars.

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Mr. JAMES. There is a great principle involved in this case with respect to which it may be necessary to say a word. I think no people should be taxed unless by the vote of those who pay the tax. I think the proposition should come up in connection with the report of the committee on the legislative department. I think the city of Louisville should be taxed as the city of Louisville, and not as the city of Jefferson. I think the city of Louisville should be taxed as the city of Louisville, and not as the city of Jefferson. I think the city of Louisville should be taxed as the city of Louisville, and not as the city of Jefferson.

Mr. JAMES. This is a question of a local character, and one in which I have no particular interest, except as I desire such information on the subject as will enable me to vote understandingly. It affects the city of Louisville and county of Jefferson, alone. I presume the

balance of the county, although it may have the power to do so, because the great body of the voters will be in that portion of the county.

Mr. PRESTON. The gentleman from Madison has precisely apprehended what I think we should do. We do not desire to tax the county of Jefferson through any representative selected by us. If the gentleman from Jefferson will withdraw his resolution, and propose that a board of magistrates shall lay the county levy, and the magistrates of the city of Louisville, have nothing to do with it, I am willing. I am opposed to having separate courts, separate clerks, and separate municipal organizations.

Mr. C. A. WICKLIFFE. I do not know that I was understood by the gentleman from Louisville. I am decidedly opposed to separate organizations. My opposition is based upon principle against the city of Jefferson power to create two distinct organizations in one county.

Mr. RUDD. Both the gentlemen seem to have a great desire to be heard on the subject of dividing the city of Louisville from the county of Jefferson, for the whole tenor and scope of the resolution, offered by the gentleman (Mr. Meriwether), and which is before the house is to that effect, and I understand it to be so. I am, perhaps, as well, if not better acquainted with the county of Jefferson as the gentleman who first spoke, but not the last, for he has been, I believe, in every house in the county, and I have not. I have large interests in the county of Jefferson outside of the city of Louisville, and I pay my taxes to it punctually, without having any voice in the direction of its affairs. I want the county to understand what was the character and force of the arguments of the gentleman representing Jefferson. The gentleman (Mr. Bullitt), in the course of his remarks, alluded to the principle adopted in all representative governments, that representation should go hand in hand with taxation. I did so in order to prove that the county of Jefferson has been taxed not according to its population and its own representation but the representation of the city of Louisville. Now an effort was made to impress the convention that this is a fact, but there is not a particle of truth in it, not that I mean to say that the gentleman made a wilful misrepresentation. Both the gentlemen well knew that a law was passed giving to the county of Jefferson, solely and entirely the power to have its own magistracy impose its own taxes, and collect and disburse its revenue.

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president may have something to say on the subject, and some information to submit to the convention. And, in order that he may have an opportunity to do so, I move that the convention lay itself off into committee of the whole upon these two questions.

The motion was agreed to.

The PRESIDENT. It seems to me there are some considerations involved in the proposition of the gentleman from Jefferson, that have not been brought to view in this convention. The proposition is this; that "when it shall appear to the legislature, that any city or town hath a number of qualified voters, equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation in both houses of the general assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio then fixed. In truth, to find a fixed by law; and thereafter, elections for the county in which such city or town is situated, shall be held therein."

Now, that is a proposition that in the county of Jefferson there shall be two county court clerks and two sheriffs. What an inextricable difficulty that will create. With one county court clerk there is no difficulty. With two county court clerks there is to have possession of the records of the county of Jefferson, where the muniments and titles of both city and county are held? Which one of the two sheriffs will be required to attend the court? And when a writ is directed to the sheriff of Jefferson county, which is to have it? In truth, to find a fixed by law; and thereafter, elections for the county in which such city or town is situated, shall be held therein."

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After the passage of that act, it was not possible for a justice residing in Louisville to impose taxes upon the people of Jefferson county, so that it was left to the magistrates outside of the city to lay the levy and disburse it. And, if the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. The city and county defray the expenses of maintaining the courts, and the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars.

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the cities separate from the counties. The circuit court of Jefferson has jurisdiction in the limits of Louisville, and when organized under the new constitution, will still be for the whole county of Jefferson. The process runs, "to the disposition of the county courts where the respective property lies, and you have two county courts within the county of Jefferson. It strikes me gentlemen have not contemplated the difficulties connected with this subject. I was willing that, whenever a city should be entitled to a separate representation, the legislature should have the right to provide that the municipal affairs of each should be uncontrollable by the other. I do not desire to have any thing to do with laying the levy in the county of Jefferson, or paying their expenses, nor do I wish that the county should interfere with the affairs of the city of Louisville. But I think we cannot get out in the way indicated, and be compelled to vote against both propositions as they are now presented. I did desire that the proposition should be referred to the committee on the legislative department. They did not adopt my suggestion, and they were not bound to do so. Indeed I was desirous that, we should have the right to endeavor to agree upon a resolution. Under these considerations, and with the difficulties in the way, I cannot vote for either proposition, and if no gentleman wishes to speak I will now ask that the committee rise.

The committee rose and reported progress accordingly.

Mr. PRESTON then withdrew the amendment he had offered. He had merely offered to show his willingness to meet his colleague on fair ground.

Mr. MERIWETHER. I should not have again troubled the convention, but for a discrepancy which appears to exist between the gentleman from Louisville and myself, in reference to the contributions made for these public buildings. The first suggestion made by the President was as to which court should have the custody of the present records. I apprehend no difficulty on this question, as it is a matter which the legislature can readily decide. But I spoke with reference to the contributions with a distinct recollection of the matter. When it was determined to remove the court house from one side of sixth street to the other, it was ascertained that there were two lots which were not necessary for the purposes of the county—the city and county each owning one-half of the interest therein. It was arranged between a committee on the part of the city and myself, that the city should buy out the interest of the county in those two lots, and a price was agreed upon. The county agreed to pay \$75,000 towards the erection of the public building, and the city agreed to go on and complete it. The city agreed to take the interest in the two lots of sixth street, and the remainder of the \$75,000 was paid in money, for I was one of the commissioners on the part of the county to pay it, and know the facts. Then the question came up as to the erection of the jail. The city now owned all the property on the west side of sixth street, and at that time the jail was on the east side of sixth street. The city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars.

The city and county defray the expenses of maintaining the courts, and the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. The city and county defray the expenses of maintaining the courts, and the city of Louisville, and the city of Jefferson, have disbursed for the erection of a court house and jail, the sum of eighty thousand dollars.

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ten, and for certain purposes there will be, and there ought to be a separation. But we will be united for other and for all purposes, that it is desirable we should be united. So far as I am concerned, I now leave this question to the disposition of the convention, conscious of having discharged my duty towards those who sent me here.

The amendment of Mr. MERIWETHER was rejected, the yeas and nays being ordered on the call of Mr. Rudd, yeas 21 and nays 55, as follows:

Yeas—Alfred Boyd, Luther Brawner, William C. Bullitt, Benjamin F. Edwards, Milton Elliott, Green Forrest, Nathan Gaither, Richard D. Ghoson, James P. Hamilton, John Hargis, Peter Lashbrooke, Martin P. Marshall, David Meriwether, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spaulding, John D. Taylor—21.

Nays—Mr. President, (Guthrie), Richard Apperson, John L. Ballinger, John S. Barlow, Wm. Bradley, Francis M. Bristow, James S. Christian, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, James Dudley, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hinton, John D. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. McClure, Richard L. Mayes, Nathan McClure, John H. Nallery, Thomas P. Marshall, John D. Morris, Jonathan Newcum, William Preston, James Rudd, James W. Stone, Michael L. Stoner, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—55.

Mr. MERIWETHER then moved a reconsideration of the vote, adopting the section providing that sheriffs should be re-eligible for a second term.

The motion under the rule would lie over until to-morrow, but on the motion of Mr. TURNER, the rule was dispensed with.

Mr. GARRARD then moved to lay the motion to reconsider on the table.

Mr. HARDIN suggested that as the house was thin the roll should be called.

The roll was accordingly called, and eighty one members answered to their names.

The question then being taken on the motion to lay on the table, by yeas and nays, on the call of Mr. CLARKE, it prevailed—yeas 44 nays 40, as follows:

Yeas—Mr. President, (Guthrie), Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, William Chenuant, James S. Christian, James Dudley, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hinton, John D. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, Richard L. Mayes, John H. McClure, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spaulding, Michael L. Stoner, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams—44.

Nays—John S. Barlow, Alfred Boyd, William Brawner, Luther Brawner, William C. Bullitt, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curi, Chastest T. Dunavan, Benjamin F. Edwards, Milton Elliott, Green Forrest, Nathan Gaither, Richard D. Ghoson, James P. Hamilton, John Hargis, William Hendrix, Thos. Hood, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, William R. Machen, Wm. D. Mansfield, William N. Marshall, Nathan McClure, David Meriwether, Jonathan Newcum, Hugh Newell, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spaulding, Michael L. Stoner, William R. Thompson, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—40.

On the report of the committee on circuit and ministerial offices as amended was then adopted.

LOUISVILLE CHANCERY COURT.

On the motion of Mr. HARDIN, the convention went into committee of the whole, Mr. BRADLEY in the chair, on the article reported by the committee on circuit courts, in relation to the Louisville chancery court, as follows:

"Sec. 1. The Louisville chancery court shall exist under this constitution, subject to repeal, and its jurisdiction to enlargement and modification by the legislature. The chancellor shall have the same qualification as a circuit clerk, and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff, and the legislature shall provide for the election of the chancellor, clerk, and marshal, of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson, and they shall hold their offices for the same term."

Mr. HARDIN. The committee on circuit courts reported this article, and it was drawn up by the presiding officer of this body, a gentleman who has long practiced in that court. The report was a unanimous one from the committee.

The PRESIDENT. I desire to give the convention the information I possess upon the subject of this court, and upon the necessity of its continuance. I inferred from the report of the committee on the court of appeals and the circuit court, that there would be doubt and difficulty as to whether the Louisville chancery court would exist under the proposed constitution, and in order to have the subject settled, a resolution was referred to the committee on circuit courts, requiring them to take the subject under consideration. They have accordingly reported the provision under consideration. The Louisville chancery court went into existence on the 13th of April, 1835, and to that court was transferred many of the causes which were pending at the time in the Jefferson county circuit court. All, however, were not thus transferred, but some were retained in that court and decided there. There have been 6,600 and odd cases brought or removed into that court, of which 5,290 and odd were finally settled by decree or dismissal. And there were some three or four hundred more partially decided, leaving altogether about 1400 cases for the docket of that court. There are also some 900 or 1000 cases which have not been disposed of or decided in any way. Such is the present condition of the business in that court, and upon examination it will be found that each year during its existence there have been upwards of 400 cases decided which would be settled by it. The court has also the jurisdiction of settling the rights of guardians, administrators, and executors, within the city of Louisville, and of causes of this character some 200 and odd have been settled and disposed of, and others are in a course of final disposition. They are settled before a chancellor, and if appealed, declared to stand as *prima facie* evidence. Including these causes, there has been upwards of 450 causes disposed of by the court annually since its establishment. Ordinarily the court sits two days in the week, on Tuesdays and Fridays, and gives opinions, hears motions, and transacts its business generally. Causes submitted to the judge most generally upon briefs, and during the period he is out of court, he has the examination of records to make, and of the authorities referred to by counsel, and such as are necessary for his own information. Independent of these two courts a week, and the time he labors during the balance of the week in preparing his decrees, the judge grants injunctions

and for certain purposes there will be, and there ought to be a separation. But we will be united for other and for all purposes, that it is desirable we should be united. So far as I am concerned, I now leave this question to the disposition of the convention, conscious of having discharged my duty towards those who sent me here.

tions, restraining orders, and *ne exeat*, and he is likely to be applied to every day, to examine the records and decide as to attachments. Independent of these duties also, many writs of *habeas corpus*, and various intricate questions of the custody of children and the power of parents and guardians over them, are brought before him. Then all collision cases are to be tried by jurors, and when he has prepared the *ne exeat* he is to have a day fixed for it, and that is always some day that is not a regular court day. And we have been engaged in the trial of some of these collision cases for a week and some times ten days, on a single case. So also in regard to contested wills, they are tried in that court, and some of them consume a considerable time. But the heaviest jurisdiction in relation to juries are in collision cases. It is in fact a mercantile court, for the transaction of nearly all that description of business that connects itself with the mercantile affairs of the county, both as to shipping and attachments against foreign debtors, together with the usual amount of chancery business of liens upon buildings, and assignments, and settlement of estates, and winding up of partnerships, embracing all that variety of jurisdiction that under our system of the circuit courts, is early upon the chancery part of the circuit courts. It was from the great accumulation of business in the Jefferson circuit court, on the chancery side, and the fact that the common law and criminal business occupied its whole time, so that the chancery side of the docket was hardly ever reached, except by motion, that induced the legislature in 1835 to establish this court. The business of the community has been done in that court with great facility, and the chancery business kept down. A great many of these cases are tried in that court, in from fifty to sixty days from the time they are commenced, if they are plain cases. Where they are complicated, and where they require a greater time to prepare them, of course it takes a longer time, and occasionally a case falls back either from the neglect of the parties, or the difficulty of getting at the facts. But I have seen no court during the period of time I have practiced, that transacts its business with more promptness and certainty than it. And although amongst the mass of cases that come to the court of appeals there have been a fair number of reversals, yet there have been a large proportion in which the individuals have been fully satisfied, and which have never been brought to the appellate court. I am satisfied that the chancery business of the city of Louisville and the county of Jefferson, will require the whole labors of a judge, and that it cannot be done without it. A large portion of the business done in that court, is of persons who reside without its jurisdiction, and who were connected with Louisville, by the commerce and trade of the city and county. It was the conviction of these facts that induced the legislature to establish the court in the first instance, and it is under the same impression, and the belief that no arrangement can be made that will be more beneficial to the litigants or to the community at large, that we have been induced to ask that it shall be recognized by the constitution, and take its place in the legislature of the country, as experience may dictate it best. Either to have it repeated, or to have its jurisdiction enlarged or diminished, as the interests of the country may demand. I am satisfied that if the convention shall diminish the number of courts in the commonwealth, if they do not leave us the chancery court, that at least they will be compelled to establish an additional circuit. I do not believe, from the immediate consideration of the subject, that the lot of the Jefferson circuit court to try that it will be possible for one judge to do the criminal business, the common law business, and the chancery business, that exists and has existed for the last three years in the city alone. The city is growing and increasing, and with it will increase the necessity of having a court of justice always open, and always ready to transact the business constantly arising in a place of increasing trade and commerce. We cannot safely dispense with such a court in the city of Louisville, and all I ask is, that it shall be permitted to exist. I see that in the draft of the bill, the name of the court is re-legible to office. This I do not desire, and I move that the name of the court be indelible for a succeeding term.

The amendment was adopted.

Mr. TRIPLETT. I concur in the opinions expressed by the President as to the necessity for the existence of the court, but I want to guard it against an evil that has sometimes happened, and may happen again. I therefore offer the following as an additional section:

"The jurisdiction of said court shall be restricted to suits where the property or estate, or some one or more of the defendants reside in Louisville."

My object is obvious on the face of the amendment. This court is now to be made a circuit court, and I want to know the limits of its jurisdiction. The jurisdiction of all the circuit courts throughout the state is limited by law, and I now want to limit the jurisdiction of the chancery court of Louisville. So far as regards Louisville, and in cases where the defendants are one or more of them reside in that city, let the court have jurisdiction. Otherwise, every man who is in the habit of visiting Louisville, or who may do it occasionally, is liable, when caught in town to be sued there, and thus the court would exercise jurisdiction over a suit, the subject matter of which, and many of the defendants might pertain to a remote part of the state. Any writ that your constituents shall be obliged either to stay out of Louisville altogether and thereby neglect their business, or if they go there be liable to have process served on them, and detained to attend to a long and sometimes complicated chancery suit? It is to guard against this that I have offered my amendment.

Mr. PRESTON. I do not see the force of the objection urged by the gentleman from Davies. The Louisville chancery court has vested in it all the chancery jurisdiction which was formerly reposed in the Jefferson circuit court, and thus, if the separation had never taken place, the same persons under the same circumstances only, would have been subject to suits in the Louisville chancery, as on the chancery side of the Jefferson circuit court. And this is all the jurisdiction we have proposed to give this court in this report—a jurisdiction that is exercised by every circuit court on its chancery side in this commonwealth. There are two classes of action—those which relate to fixed property, which are local, and transitory actions, which it is right and proper should follow the person. The Louisville chancery court, before, received only that jurisdiction which the circuit court on its chancery side possessed anterior to its establishment, and it was thus established only because the business was so great under the advancing wealth and population of the county, that it was necessary to make the division in order to administer justice.

The gentleman certainly would not deprive the chancery court of Louisville of its general jurisdiction over subjects which every circuit court in the commonwealth possesses. If the man be in debt, and the remedy be in chancery, he may be served with process in Fayette, or Hickman, or Mason counties, and tried in the circuit courts of those counties under precisely similar circumstances as in the chancery court in Louisville. There was no difference in the proceeding, and yet the gentleman does not object to the jurisdiction of the circuit courts in such cases. Now the chancery court of Louisville exercises a jurisdiction, which, after the experience of ages, has been asserted and declared in the courts of England and in every state of the Union, over a certain class of action relating to matters which being transitory in their character, the remedy should be obtained wherever the person of the defendant is found. And this is the jurisdiction always exercised on the chancery side of the circuit court, and of which no complaint has been made. We only ask that that jurisdiction shall remain undiminished here, and leave it to the legislature to provide for its restriction or extension as necessity may dictate. If it should be found to work, as the gentleman apprehends, the legislature will have power to restrict it. This is not a constitutional court, over which the legislature is to

have no control, as the gentleman seems to infer. The clause reads in this way, "The Louisville chancery court shall exist under this constitution subject to repeal, and its jurisdiction enlarged or restricted by the legislature." There is therefore no difficulty in reaching the subject of jurisdiction by legislation, if it should hereafter become necessary.

Mr. TRIPLETT. It is true that this court has heretofore existed by law, but the legislature when it created it did not do that justice to the balance of the citizens of the state which was due to them. Therefore now, when this convention is about to make the court a constitutional one, by requiring its continuance, I desire to do that which the legislature should have done at the time it first established the court. This proposition can be made so clear that no man can misunderstand it. I have drafted this amendment with some care, and the gentleman's objection to it does not lie. By my amendment, if the defendants or any one of them reside in Louisville, or if their property being transitory, is in Louisville, then the chancery court there would have jurisdiction over it. But I do not want to give that jurisdiction over the whole of the citizens of the state, wherever they may be. Suppose my amendment does not pass, why the evil now existing will continue to exist, and we know it. We all know that never, up to this day, have we had power sufficient in the legislature to prevent this very evil of which we now complain. I know from my own personal knowledge, as do other gentlemen in this convention, that the jurisdiction of suits have been transferred to the Louisville chancery court, when neither the subject matter in controversy nor one of the defendants have resided in that city. The case of Spotts was removed there, and the land involved lay in Henderson county, and every one of the defendants lived there except one by the name of Barbour. He was passing through Louisville, and was served with the writ of attachment, and the case was removed there. Adequate will be made to their constituents shall be forever hereafter liable to be subjected to this inconvenience, provided the legislature does not correct it. And if the circuit court possessed the same jurisdiction, and had exercised it in this way, I ask if, according to the gentleman's proposition, the jurisdiction of the circuit court, deprived them of that power? Take an instance that might occur at the seat of government here. Suppose a man comes here on business which is necessary for him to transact, and which cannot be transacted any where else,—ought the circuit court of this county to have jurisdiction over a transaction of land in Henderson county, where all the witnesses are residing, merely because this man, as one of the parties in the suit, was caught here in the transaction of his necessary business? I say no. It is wrong, and there is not a man here, who, if his constituents were placed in that condition, would not resent it. Then if it is wrong why should we remedy the defect of that power? I move that the jurisdiction of the circuit court be enlarged so that it shall be permitted to exist. I see that in the draft of the bill, the name of the court is re-legible to office. This I do not desire, and I move that the name of the court be indelible for a succeeding term.

The amendment was adopted.

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subject matter comes up, let him make his proposition; but I protest against its being added to the bill, and the jurisdiction of the chancery court, either more restricted, or more enlarged than it is elsewhere.

Mr. TRIPLETT. I was in hopes that some other person would reply to the argument of the gentleman on the other side. I have already stated the remarks of the two gentlemen from Louisville, and to the reply made by the younger gentleman from Nelson, and I ask the house, calmly to reflect, what are the arguments made use of against my proposition? Has there been a solitary reason urged against it? I previously acknowledged the fact, for the purpose of saving time, that the circuit courts have got this jurisdiction, as the gentleman states. But I tell you candidly, that my object is to circumscribe the jurisdiction of the Louisville chancery court. In reference to Spott's case, it was a most outrageous fraud, and I had some part in exposing the fraud; but that is not the question. The question is as to the *locus in quo*, the place where the action ought to have been brought. Ought it not to have been brought in the county of Henderson, where the parties to the suit, wherever they may be, and the records were? If any proper cause could be shown why it should not be tried there, it could have been remedied by a change of venue. Let us reflect for one moment on the proposition that I have submitted. I believe that in its true construction, it will include the cases put by the gentleman. Whenever a contract is made in Louisville, let the trial be had there, if a fraud be perpetrated there, goods obtained under false pretences, the amendment that I have proposed covers the case; if it does not, add to it the words, "where a contract expressed or implied is made in the city of Louisville." You will then cover the whole ground, and if any lawyer on this floor gives it as his opinion, that the amendment, as drafted, does not cover the ground, I will move to add the words that I have suggested.

The mere question is, shall your constituents, because one of them happens to go to Louisville, be sued there, and all the balance of the defendants lying in Hickman, or in Knox, or in any other of the border counties of the state, be sued, the courts there should have jurisdiction, not only over all the defendants in the case, but over the subject matter. What is the effect of giving jurisdiction to a court in a remote part of the state? Does any gentleman say it ought to be so? But the gentleman says, that I am drawing a distinction between the chancery court of Louisville, and the ordinary circuit court having jurisdiction in chancery cases; be it so. Have they shown that my proposition is wrong? No sir, so far from it, they show that the provision ought to be extended to all the other courts. My maxim is to remedy the evil, where it occurs, and I think it is my duty, as far as I am able, to provide that this evil shall not be repeated. I desire that this clause shall be inserted in the constitution.

Mr. PRESTON. I rise merely to answer one or two points in the remarks of my friend from Davies. He says he has heard no reason yet advanced why his amendment should not be adopted. He has heard none, because the distinguished gentleman who preceded him, in discussing the subject, has not yet said a word in support of his proposition. I have alluded to the case of Spott's heirs and Barbour. I have not read that case, but it seems to me that the gentleman is not taking the proper course to cure the evil he complains of. He is endeavoring to do it by restricting the jurisdiction of the chancery court, when the injury he complains of arises from the decision of the appellate court.

Mr. TRIPLETT. The gentleman does not understand me. I do not object that the decision was wrong. I only cite the case as an instance, where the defendant of the Jefferson county circuit was, in relation to chancery matters, before the chancery court was established; not more and not less. It has the same jurisdiction that every circuit court in the commonwealth of Kentucky has, in relation to chancery matters. Now, if there is a grievance in relation to the jurisdiction of the chancery court, I would suggest to the gentleman that he should endeavor to be made an exception, and that he should make his amendment to prohibit the legislature from granting the same jurisdiction to the other courts in the commonwealth. I am very sorry, sir, that the gentleman has intimated, in support of his argument for curtailing the jurisdiction, the case of the fraudulent fraud in Spott's case. The children were infants, and there was a continuation between the judgment creditor and the administrator of the estate, who fully administered upon it, and then bought in a large and valuable tract of land for a nominal price, under the pretence outside, that it was bought in for the benefit of the heirs. The sheriff made a sale of the land, and the knowledge of all the facts. It was one of the most outrageous frauds that was ever practiced upon infants. I have seen the record; it has been passed upon by the court of appeals. It is a case that shows how the rights of those who have no one interested in their behalf, and who cannot look after their interests themselves, may be trampled upon through the decision of a court of justice. It is one of the strongest evidences showing the need of a judicial power that exists in the breast of the chancellor. But that it should be made an argument to restrain the jurisdiction of the chancery court, is somewhat extraordinary. If it is the sense of the convention, that the jurisdiction of this court should be restrained, make the restriction applicable to the circuit courts; but do not restrain this, and let the jurisdiction of the balance of the courts remain as it is.

But the gentleman says that this court should not be permitted to issue process against a man who resides in another county. If a man goes into a neighboring county, and owes a debt there, in the sheriff can serve process on him, and he must answer to the demand in a court of law; and so it is in a court of chancery. I have seen a suit in relation to real estate, where the recovery is to be direct for the thing itself, and the action is termed local, and has to be brought in the circuit where the property lies. But where the chancery court issues process upon the ground of fraud, the party may be served with process, wherever he may be found. There are many cases in which this jurisdiction is very applicable. A man comes into Louisville, and sells a negro, who proves to be unsound; the individual guilty of this kind of fraud, may be prosecuted where the fraud was transacted. A man buys a quantity of goods without any intention of paying for them, or obtains goods by false pretences, or false representations, and refuses to pay; he is within your jurisdiction, and process may be served upon him, wherever he may be found. I insist that it is a subject that ought to be regulated by the legislature.

This report proposes to leave the existence of the court, and the extent of its jurisdiction, entirely with the legislature. Is not that sufficient? Are we going to legislate upon every minute point, in making a general law? If so, we are likely to be kept here forever. Now I submit the question, whether we ought to provide for the jurisdiction of the courts within the limits of the legislature. If we undertake to make this court an exception, it will look very extraordinary. Are we to declare that all the courts in the commonwealth should have the same jurisdiction that now exists, except the circuit court of Louisville, and that shall have less than all the other courts in the state? That is the bill the gentleman is proposing to bring here. I think that is proper.

I submit that this is not the proper place to determine the jurisdiction of all the courts, by a general provision, when the whole

matter for legislative enactment, and should not be made a constitutional provision.

Mr. TRIPLETT. It is necessary to put myself right, for I do not wish to be understood in regard to this matter. I did not start until I knew I was right, and I do not intend to be put wrong.

This is a special court established for a special purpose; therefore the gentleman's simile is not applicable because the others are general. I am the last man in the house to appeal to any prejudice that exists against Louisville, if any exist, but it is rather extraordinary to hear gentlemen so frequently referring to a supposed prejudice, if none does exist.

Mr. President. I did not say there was a prejudice, but that the gentleman might array prejudice against Louisville.

Mr. PRESTON. The gentleman is mistaken if he supposes that I asserted that any prejudice exists.

Mr. TRIPLETT. I am glad to hear it. So far from arraying prejudice against Louisville I would remove any prejudice if it were in my power. It is not on account of any prejudice against the place, but simply because it is a city with a large majority of the citizens of the state are compelled to go on business. And the question is—and it is a plain and simple one—whether they shall be sued when they go there on business, and be compelled to carry their witnesses there, and in some cases there are fifty or a hundred witnesses. It is a subject in which every body is interested.

In answer to the younger gentleman from Louisville, I will say there is not a solitary case that was quoted by him, in which the common law courts have no jurisdiction. The gentleman supposes the case of a man who borrows a thousand dollars in London, and he thinks that the chancery court should be permitted to issue process against the debtor in such case. But the common law courts have equal jurisdiction over the matter, when you get jurisdiction there, and your bill of discovery follows of course; your writ of *ne exeat*—by the way, the word does not sound well in a republic. All writs in that court follow the writs of common law, and I tell the gentleman that there is not a case that was stated by him, that cannot be answered. I have no doubt it is our duty to adopt the amendment.

The question being put, it was upon a division, rejected, yeas 23, nays 28. So the amendment was rejected.

The committee rose and reported the amendment.

The question then being upon concurrence in the amendment reported by the committee.

It was concurred in.

Mr. KELLEY. I wish to amend the report by inserting an amendment to provide that the Louisville chancery court shall exist under this constitution like all other chancery courts in this commonwealth.

And not quite satisfied with this part of the report. Every lawyer in this house knows very well that it has been the custom of the chancery courts in this country, as well as in every other, to encroach upon the business of the common law courts. It is for this reason that I move this amendment.

Mr. PRESTON. There is no other chancery court in this commonwealth.

Mr. KELLEY. There is a chancery side of every court.

Mr. TURNER. This constitution does not attempt to fix the jurisdiction of the court at all. It leaves it just as it is, subject to be increased or diminished by the legislature. And every other court in the commonwealth is subject to that situation. It is just where it ought to be in my opinion. I think the committee have discharged their duty exceedingly well, they could not place it upon a better footing.

Mr. APPERSON. So far as the gentleman from Madison is concerned, it may be very expedient, but I shall ask to be heard upon its merits. I should be glad to have it passed over for the present.

The convention then adjourned.

SATURDAY, NOVEMBER 10th, 1849.

Prayer by the Rev. Mr. NORTON.

Mr. DIXON, at his request was discharged from further duty on the special committee raised on Mr. Gaither's motion to amend the report on the powers of the general and state government.

COMMITTEE OF REVISION.

The President announced the following as the select committee of ten, appointed under the resolution offered yesterday, by Mr. McHenry, to arrange and revise the several articles of the constitution that may be adopted, viz: Messrs. McHenry, Moore, W. C. Marshall, Garrard, Machen, Bowling, Garfield, Williams, Lisle, and Stone.

LEAVE OF ABSENCE.

On motion, leave of absence was granted to Mr. Edwards, until Wednesday next, to Mr. Robinson, until Tuesday, to Mr. T. J. Hood, for a few days, and to Mr. Wheeler, for a few days.

REPORT FROM A COMMITTEE.

Mr. DIXON from the committee on the executive for the state at large, made the following report, which on his motion was referred to the committee of the whole and ordered to be printed.

ARTICLE I.—

Concerning the executive department.

Sec. 1. The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be styled the governor of the commonwealth of Kentucky.

Sec. 2. The governor shall be elected for the term of four years, by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct.

Sec. 3. The governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

Sec. 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years preceding his election.

Sec. 5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until he shall be elected or four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths, or affirmations, prescribed by this constitution.

Sec. 6. No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor.

Sec. 7. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Sec. 8. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly.

Sec. 9. The governor shall have power to fill vacancies that may happen by death, resignation, or otherwise, by granting commissions, which shall expire when such vacancies have been filled according to the provisions of this constitution.

Sec. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason he shall have power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested.

That whenever the governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reasons for doing so on the records of the secretary of state, in a separate book; and on the assembly, the same shall be laid before them, and published if they deem proper.

Sec. 11. He may require information in writing, from any officers in the executive department, upon any subject relating to the duties of their respective offices.

Sec. 12. He shall, from time to time, give to the general assembly, information of the state of the commonwealth, and recommend to their consideration such measures as he may deem expedient.

Sec. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if it should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

Sec. 14. He shall take care that the laws be faithfully executed.

Sec. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

Sec. 16. He shall, by virtue of his office, be speaker of the general assembly, and shall preside at the sessions of the assembly, and on all matters of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

Sec. 17. Whenever the office of governor shall become vacant, the lieutenant governor shall discharge the duties of governor until his successor shall have been duly elected; but a new election shall take place to fill such vacancy, unless the same shall have occurred before the first two years of the time shall have expired for which the governor was elected; and if, during the time the lieutenant governor shall fill such vacancy, he shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state for more than one month, he shall, in like manner, administer the government for the balance of the term.

Sec. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for the occasion.

Sec. 19. The lieutenant governor, while he acts as speaker of the senate, shall receive for his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received, and been entitled to, had he been employed in the duties of his office.

Sec. 20. The speaker *pro tempore* of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received, had he been employed in the duties of his office, and in case the speaker of the senate shall provide for holding the court of appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the judges of the court of appeals.

Sec. 21. The governor shall nominate, and, with the advice and consent of the senate, appoint a secretary of state, who shall be commissioned during the term for which the governor shall have been elected, if he shall so long believe himself well. He shall keep a fair register, and attend to all the official business of the state, and shall, when required, lay the same before the general assembly, and shall perform such other duties as may be enjoined on him by law.

Sec. 22. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; if he disapprove, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor, within ten days (Sundays excepted), after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless returned back within three days after their next meeting, but it shall be a law.

Sec. 23. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or being disapproved, shall be repassed by a majority of all the members elected to each house, according to the rules and limitations prescribed in case of a bill.

Sec. 24. Contested elections for governor and lieutenant governor shall be determined by both houses of the general assembly, according to such regulations as may be established by law.

Sec. 25. The legislature shall provide, and no term not exceeding two years, for the appointment of treasurer, auditor of public accounts, register of the land office, and such other officers of a public nature as may become necessary, and shall prescribe their duties and responsibilities, and, until otherwise directed by law, shall be elected by the qualified voters of this commonwealth.

Sec. 26. A board of commissioners shall be appointed every two years by the judges of the court of appeals, one from each appellate district, whose duty it shall be to make an examination every two years, of the accounts of the receiving and disbursing officers of the state at large, and report to the legislature.

COURTS OF JUSTICE.

Mr. C. A. WICKLIFFE, from the joint committee on the courts of appeals, circuit courts, and county courts, to whom were re-committed the reports of the committees on the court of appeals, circuit courts, and county courts, reported the following amendment as a substitute for the whole of said reports, which, on his motion, was ordered to be printed, and the consideration thereof postponed to Tuesday next:

ARTICLE II.—

Concerning the judicial department.

Sec. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, (which shall be styled the court of appeals,) the courts established by this constitution, and in such inferior courts as the general assembly may, from time to time, erect and establish.

Sec. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

Sec. 3. The judges of the court of appeals shall hold their offices for the term of eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.*

Sec. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business: *Provided, that whenever a vacancy shall occur in said court, from any cause, the general assembly shall have the power to reduce the number of judges and districts, but in no event shall there be less than three judges and three districts. In case a change in the number of the judges, or of the number of districts shall be the result of the action of the general assembly, the judges shall, by virtue of their offices, be conservators of the peace throughout the state. The style of all process shall be, "The Commonwealth of Kentucky," and conclude "against the peace and dignity of the same."*

Sec. 5. The general assembly, at its first session after the adoption of this constitution, shall divide the state, by counties, into four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one judge of the court of appeals.

Sec. 6. The judges first elected shall serve as follows: one six, and one eight years; the judges, at the first term of the court, succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

Sec. 7. If a vacancy shall occur in said court, the governor shall issue a writ of election to fill such vacancy, for the residue of the term, and another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected, whose death, resignation, removal, or other cause, produced such vacancy.

Sec. 8. No person shall be eligible as judge of the court of appeals who is not a citizen of the United States, a resident of the district for which he may be a candidate, two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record shall be equal to the time he may have practiced law, shall be equal to eight years.

Sec. 9. The court of appeals shall hold its sessions at the seat of government, unless otherwise directed by law, but the general assembly may, from time to time, direct that said court shall hold sessions in any one or more of said districts.

Sec. 10. The first election of the judges of the court of appeals shall take place on the second Monday in May, 1851, and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office; the judges of the said court shall be commissioned by the governor.

Sec. 11. There shall be elected, by the qualified voters of this state, a clerk of the court of appeals, who shall hold his office for the term of eight years, from and after his election, and who may be removed by the court of appeals for good cause, upon information by the attorney general; and in case the clerk of the court shall provide for holding the court of appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the judges of the court of appeals.

Sec. 12. No person shall be eligible to the office of clerk of the court of appeals unless he be a citizen of the United States, a resident of the state two years next preceding his election, of the age of twenty-one years, and have a certificate from a judge of the court of appeals, or a judge of the circuit court, that he has been examined by the court, and is a competent person of the court giving said certificate, and that he is qualified for the office for which he is a candidate.

Sec. 13. In case of a vacancy in the office of clerk of the court of appeals, the governor shall, by a writ of election, elect a qualified voter of the State, or of any district, to fill such vacancy may occur, shall elect a clerk of the court of appeals, to serve until the end of the term for which such clerk was elected: *Provided, that when a vacancy may occur from any cause, or the clerk shall be under charges upon information, the judges of the court of appeals shall have power to elect a clerk *pro tem* to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted.*

Sec. 14. The general assembly shall direct by law the mode and manner of conducting and making due returns, to the secretary of state, of all elections of the judges and clerks of the court of appeals, and of determining contested elections of any of these officers.

ARTICLE III.—

Concerning Circuit Courts.

Sec. 1. There shall be established in each county now, or which may hereafter be erected in this commonwealth, a circuit court.

Sec. 2. The jurisdiction of the circuit courts shall be, and remain as now established, hereby giving to the general assembly the power to change or alter it.

Sec. 3. The right to take an appeal, or sue out a writ of error to the court of appeals, is hereby given in the same manner, and to the same extent, as is now given, giving to the general assembly the power to change, alter, or modify said right.

Sec. 4. At the first session of the general assembly after this constitution shall go into effect, they shall divide the state into twelve judicial districts, having due regard to business, territory, and population: *Provided, that no county shall be divided.*

Sec. 5. The general assembly shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a judge for said district, and shall prescribe how, and in what manner, the elections shall be held and conducted, and the governor shall be notified of the result of the election, and if he has been chosen: *Provided, that such election shall be held at a different time from that at which elections are held for governor, lieutenant governor, and members of the general assembly.*

Sec. 6. All persons qualified to vote for members of the general assembly, in each district, shall have the right to vote for judges.

Sec. 7. No person shall be eligible as judge of the circuit court who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years.

Sec. 8. The term of office of the judges of the circuit court shall be six years from the day of the election. They shall be commissioned by the governor, and continue in office until their successors be qualified. The term of a judge from his district shall vacate his office, and when a vacancy may happen from any cause, it shall be filled as hereinafter prescribed.

Sec. 9. The general assembly, if they deem it necessary, may establish one district every four years; but the judicial districts shall not exceed sixteen, unless after the population of the state shall exceed one million, use hundred thousand.

Sec. 10. The judges of the circuit courts shall, at stated times, receive for their services, an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

Sec. 11. The judges of the circuit court shall be removed from office by a resolution of the general assembly, passed by a two-thirds of each house. The cause or causes for such removal shall be entered at large on the journal of each house.

Sec. 12. The governor shall have no power to remit the fees in the clerk, sheriff, or commonwealth's attorney, in proceedings in the circuit court. If a vacancy shall occur in the office of judge of the circuit court, the governor shall issue a writ of election to fill such vacancy, for the residue of the term, and another judge shall be elected.
